

BOARD OF APPEALS CASE NO. 5153

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BEFORE THE

APPLICANTS: Elisabeth & Regina Spitznagel

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ZONING HEARING EXAMINER

**REQUEST: Variances for existing sun room
and garage with carport; 2020 Park Beach Drive,
Aberdeen**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/3/01 & 8/8/01

HEARING DATE: September 24, 2001

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Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Elisabeth Spitznagel and Regina Spitznagel, are requesting a variance, pursuant to Section 267-36B, Table IV, of the Harford County Code, to allow an existing sunroom to be within the required 50 foot rear yard setback; and a variance pursuant to Section 267-26C(1), to allow an existing detached garage with carport more than 50% of the square footage of habitable space of the dwelling in an R1 District.

The subject parcel is located at 2020 Park Beach Drive, in the Second Election District, and is more particularly identified on Tax Map 63, Grid Number 4A, Parcel 101, Lot 41, in the Forest Greens subdivision. The parcel contains 0.393 acres more or less.

The Applicant, Elisabeth Spitznagel, appeared and testified that she and the Co-Applicant, Regina Spitznagel are the owners of the subject property. She indicated that she has read the Department of Planning and Zoning Staff Report, and has no changes or corrections to the information contained therein. The witness described the property as a long, narrow, waterfront lot, improved by a brick rancher with an enclosed sunroom and deck attached to the rear of the dwelling. The dwelling is built near the rear of the lot, close to the waterfront. The property is also improved by a freestanding, two-car garage with an attached carport, and a frame shed. There is a new fence under construction on the right side of the property next to the dwelling.

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Ms. Spitznagel testified that the property is located on the Bush River, and that there is an area of open space between her property and the waterfront. The property across the street, on the other side of Park Beach Drive, is an unimproved wooded lot. The Applicant stated that the site plan (Staff Report Attachment 3) shows the location of the existing home, attached enclosed sunroom, deck, shed, garage and attached carport. She testified that the sunroom used to be a screen porch, which was enclosed pursuant to Building Permit No: 1351-88, issued in 1988. According to the Applicant, her husband enclosed the screen porch to create the existing sunroom, and constructed the deck. At the same time, he removed an awning from the old screen porch and attached it to the to the garage to form the roof of the carport. Ms. Spitznagel testified that the outside wall of the sunroom is located approximately 45 feet from the seawall at the rear of the property. There is a large drop from the edge of the seawall to the water.

The witness then described several photographs attached to the Department of Planning and Zoning Staff Report. Attachment 7A is a photograph which shows the driveway of the subject property, taken from Park Beach Drive, facing her home. Attachment 7B shows the front of the property, and the detached two-car garage with carport. Attachment 7D shows the attached sunroom and deck constructed on the rear of the property. The witness testified that the sunroom and deck face the waterfront. Attachment 7E shows the view from the deck, looking toward the seawall and the Bush River.

Finally, Ms. Spitznagel testified that the attached sunroom and deck are compatible with, and similar in size and appearance, to other sunrooms and decks commonly found in the Forest Greens neighborhood. She also testified that there are similar garages with attached carports located within the neighborhood. The witness does not believe that the requested variances would have any adverse impact on neighboring properties because the structures enhance the property and are not detrimental to the neighbors or the neighborhood.

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Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune testified that the Department of Planning and Zoning recommended approval of the subject request in its June 22, 2001 Staff Report. He indicated that the Department found that the subject property is unique because it is a long narrow waterfront lot with all improvements located to the rear portion of the lot, close to the waterfront. The witness also testified that the deck, sunroom and garage are similar to other improvements found on surrounding lots. Mr. McClune stated that in his opinion the granting of the requested variance will not have any adverse impact on neighboring properties or the intent of the Code. Finally, he testified that the subject property is located within the Chesapeake Bay Critical Area.

The Planning and Zoning Staff Report indicates that the property has been designated as a Buffer Exempt Area, making it subject to specific requirements set forth in Section 267-41.1F(3)(b) of the Harford County Development Regulations. According to that report, “[a]s a Buffer Exempt Area, the property is also subject to the requirements of 267-41.1G(4)(a)[10][f], which addresses mitigation for new impervious surfaces. Because the existing sunroom was constructed within the Buffer Exempt Area, mitigative plantings or a fee-in-lieu must be provided in the amount of two times the amount of impervious surface created.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Elisabeth Spitznagel and Regina Spitznagel, are requesting a variance pursuant to Section 267-36B, Table IV, of the Harford County Code, to allow an existing sunroom to be located within the required 50 foot rear yard setback; and a variance pursuant to Section 267-26C(1), to allow an existing detached garage with carport more than 50% of the square footage of habitable space of the dwelling in an R1 District.

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Section 267-36B, Table IV, of the Harford County Code provides for a minimum 50 foot rear yard setback.

Section 267-23C(1)(a)(6) of the Harford County Code provides:

“Exceptions and modifications to minimum yard requirements.

(1) Encroachment. [Amended by Bill No. 88-17]

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

The existing setback for both the sunroom and the deck is approximately 30 feet. The Applicants are requesting a variance of approximately 20 feet for the sunroom. Because the deck is allowed to encroach up to 25% into the required rear yard setback, the Applicants need a setback of only 38 feet for the deck; therefore, they are asking for a variance of approximately 8 feet for the deck.

Section 267-26C(1) of the Harford County Code provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

(1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of § 267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1. [Amended by Bill No. 84-56]”

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The detached two-car garage with carport is an accessory use which exceeds 50% of the square footage of the dwelling located on the subject property. The existing structure consists of approximately 876 square feet, and the maximum allowable size in this case is approximately 798.5 square feet. The Applicants therefore need a variance of 77.50 square feet for the garage and carport.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The lot is a long and narrow waterfront property with an area of open space located between the property line and the water.

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Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because all of the improvements are located to the rear of the property near the waterfront. In addition, the hearing examiner finds that the Applicants would suffer real hardship if they were required to remove the existing garage with carport.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to, adjacent properties, or materially impair the purpose of this Code or the public interest. There are no adjoining property owners to the rear of the property because this is a waterfront lot with both a seawall, and an area of open space between the property line and the water.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the existing sunroom, deck, and garage with carport.
2. That the Applicant shall prepare and submit, along with the request for building permits, a plan for mitigative plantings or the payment of a fee-in-lieu thereof to the Department of Planning and Zoning for its review and approval.
3. That the Applicant not encroach further into the setbacks than the distance requested herein.

DATE OCTOBER 16, 2001

**Rebecca A. Bryant
Zoning Hearing Examiner**